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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

TRENT TRUST COMPANY, LTD.,

and

COOKE TRUST COMPANY, LTD., *Petitioners*

v.

ROBERT F. KENNEDY, Attorney General of the United States, as Successor to the Alien Property Custodian

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners pray that writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on January 4, 1962, affirming the judgment of the United States District Court for the District of Columbia.

OPINIONS BELOW

The United States District Court for the District of Columbia filed no opinion and made no findings of fact or conclusions of law. The opinion of the Court of Appeals for the District of Columbia Circuit as initially filed January 4, 1962 (App. A, pp. 1a-6a) is not officially reported; its opinion, as amended by order filed September 14, 1962 (R. 34-38; App. A, p. 8a) is reported in 307 F. 2d 174.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on January 4, 1962 (R. 40; App. A, p. 7a). Pursuant to order entered February 21, 1962 permitting its filing out of time (R. 40a), petition for rehearing was filed the same day (R. 41). On September 14, 1962, the Court entered its order amending its opinion (R. 53; App. A, p. 8a) and the same day entered its order denying the petition for rehearing (R. 52). The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

QUESTION PRESENTED

In Hawaii in 1922, German nationals claimed and in 1928 (by judgment of the Ninth Circuit reversing the Hawaii Supreme Court) recovered damages from petitioner, as trustee, for its breach of trust, in failing to sue to recover back from the Alien Property Custodian trust assets held under the trust for the benefit of enemy German nationals and seized by the Custodian as enemy property, and in failing thus to prevent sale of the trust property by the Custodian.

Upon suit in 1959 by the American trustee, to recover from German government funds seized in World War II, on the German government's obligation arising

from the breach of the Versailles treaty annex covenant, resulting from the 1922 claim and recovery by German nationals, the question presented is:

Whether that covenant for the protection of American nationals against claim or action by German nationals "in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations" of an Allied government, is limited so as to protect only against claims or actions asserting liability of American nationals to German nationals under the Trading with the Enemy Act or other war time regulations or is to be read literally broadly to protect American nationals against any claim against them, as trustee, bailee, agent or otherwise, seeking to impose liability to German nationals on account of any act or omission that was "under or in accordance with" the war time measures of the United States with respect to enemy property.

TREATIES AND STATUTE INVOLVED

The statute and treaties involved are as follows:

Trading with the Enemy Act, sec. 34 (added by Act of August 8, 1946, c. 878, sec. 1, 60 Stat. L. 925, 927, amending the First War Powers Act, 1941, Title III, 55 Stat. 838, 50 U.S.C. App. § 34.

Treaty of Versailles, concluded June 28, 1919 (Sen. Doc. 348, 67th Cong., 4th Sess., T. S. No. 658), Part X, Section IV, Art. 297, and Annex to Section IV.

Joint Peace Resolution of July 2, 1921, S. J. Res. 16, c. 40, sec. 2, 42 Stat. 105.

Treaty of Berlin, proclaimed November 14, 1921, Arts. I and II, 42 Stat. 1939, 1942-1943.

The pertinent portions are set out in Appendix B, *infra*, pp. 9a-15a.

STATEMENT

By complaint filed December 29, 1959, under sec. 34 of the Trading with the Enemy Act,[1] petitioners[2] brought this suit in the United States District Court to review the denial by the Attorney General[3] of petitioners' debt claim against funds of the German Government seized in World War II and confiscated by the United States under section 34 of the Trading with the Enemy Act. Jurisdiction of the District Court was conferred by 50 U.S.C. App. § 34(f).

The petitioners by their amended complaint (R. 3-8) asserted that on objections to its account as trustee filed by German national beneficiaries in 1922, it had been held liable to such beneficiaries on judgment final in 1929, for breach of its fiduciary duty as trustee in failing to sue to recover back from the Alien Property

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[1] Section 34 was added by the Act of August 8, 1946, c. 878, sec. 1, 60 Stat. 925, 927 (amending the First War Power Act, 1941, Title III, 55, Stat. 838 (1941)), 50 U.S.C. App. § 34. It provided for submission of such claims to the Alien Property Custodian and authorized complaint in the United States District Court for the District of Columbia to review his schedule of claims allowed Congress created a quasi-in-rem proceeding providing that any property or interest vested in the Alien Property Custodian subsequent to December 18, 1941, or the net proceeds thereof shall be equitably applied to payment of debts owed by the person who owned such property or interest immediately prior to the vesting in the Alien Property Custodian.

[2] The Cooke Trust Company is the receiver for Trent Trust Company appointed January 9, 1932, by the Circuit Court of the First Judicial Circuit of Hawaii (R. 4).

[3] By Executive Order No. 9788 (11 Fed. Reg. 11981 (1946)) the office of the Alien Property Custodian was terminated and its powers and functions transferred to the Attorney General. "Custodian" will hereinafter refer to the Custodian or the Attorney General as his successor, as context may require.

Custodian certain sugar company stocks that had been seized and held by the Custodian and in failing thus to prevent public sale of such stocks by the Custodian. *Estate of Isenberg*, 28 Hawaii 590, reversed *Isenberg* v. *Trent Trust Co.*, 26 F. 2d 609, rehearing denied, 31 F. 2d 553 (9th Cir. 1928, 1929) (R. 8).

The amended complaint further alleged that this recovery by action by German nationals was a breach of the German Government's covenant and obligation contained in the Treaty of Versailles (Part X, Section IV, Art. 297(d), and Annex to Section IV) rights under which were reserved and granted to American nationals by the provisions of section 2 of the Joint Peace Resolution of July 2, 1921, S. J. Res. 16, c. 40, 42 Stat. 105 and by the Treaty of Berlin, 42 Stat. 1942-1943 (R. 10-11).

The Treaty of Versailles Part X, Section IV provided that as between the Allied Powers or their nationals on the one hand and Germany or her nationals on the other, all exceptional war measures or measures of transfer; or acts done in execution of such measures "shall be considered as final and binding upon all persons" (Art. 297(d), (App. B, *infra*, p. 11a). Germany undertook to compensate her own nations in respect of the sale or retention of their property, rights or interests in Allied States (Art. 297(i), (App. B, *infra*, p. 11a). Paragraph 1 of the Annex to Section IV spelled out in detail the confirmation of the effectiveness of all Allied orders dealing with property of German nationals and provided: "No question shall be raised as to the regularity of a transfer of any property rights or interests dealt with in pursuance of any such order, direction, decision or instruction." The amended complaint (R. 11) invoked paragraph 2 of the same